

**LAXMAN BHATTARAI**  
Claimant

VS.

**TACO BELL**  
Respondent

AND

**LEGION INSURANCE**  
Insurance Carrier

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After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Board makes the following findings and conclusions:

The ALJ has the authority to grant or deny a parties request for medical treatment and/or the payment of temporary total disability compensation as a result of a preliminary hearing.<sup>1</sup> The Board does not have the jurisdiction to review an ALJ's preliminary hearing order unless one of the jurisdictional issues listed in K.S.A. 44-534(a)(2) is disputed or it is alleged the ALJ exceeded his jurisdiction in granting or denying the requested medical treatment or temporary total disability compensation.<sup>2</sup>

Here, the claimant argues that the payment of utility bills is medical treatment as contemplated by K.S.A. 44-510h. Claimant is a quadriplegic as the result of a gunshot wound he suffered in the neck while working for respondent. Claimant presently is living in a handicapped accommodated apartment. Claimant argues that the payment of utility bills constitutes reasonable and necessary medical treatment to provide: (1) water to keep claimant clean, (2) electricity for light and cooling of the apartment, (3) gas for cooking and heating the apartment, and (4) telephone for medical emergencies.

But respondent argues that it is not its responsibility to pay claimant's utility bills because those expenses are not medical treatment as defined in the Act. K.S.A. 44-510h places the duty on the employer to provide medical treatment, "as may be reasonably necessary to cure and relieve the employee from the effects of the injury."<sup>3</sup> Medical services are described in K.S.A. 44-510h as follows: "the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation...." Additionally, K.A.R. 51-9-2 defines apparatus as, "glasses, teeth, or artificial member." Also, K.A.R. 51-9-11 establishes the criteria for reimbursement of expenses for transportation to obtain medical treatment.

What constitutes medical treatment under the Act was addressed by the Court of Appeals in the case of Hedrick v. U.S.D. No. 259, 23 Kan. App. 2d 783, 935 P.2d 1083 (1997). In Hedrick, the ALJ, as a result of a preliminary hearing, ordered the employer to pay the difference between claimant's old smaller vehicle and a larger more accessible vehicle because of claimant's hip replacement caused by a work-related injury. The injured worker's treating physician wrote a letter recommending the need for the larger car to enable the worker to safely climb in and out of the car. Respondent appealed that order to the Board. The Board dismissed the appeal, reasoning that a preliminary hearing order granting medical treatment was within the jurisdiction of the ALJ and was, therefore, not reviewable by the Board. After a discussion on what is defined as medical treatment under the Act, the court held that the purchase of the larger car was not medical treatment within the meaning of the Act. Thus, the court held the Board erred in dismissing the appeal, and

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<sup>1</sup> See K.S.A. 44-534a.

<sup>2</sup> See K.S.A. 44-551(b)(2)(A).

<sup>3</sup> See K.S.A. 44-510h(a).

also held the ALJ exceeded her authority in ordering the employer to reimburse the injured worker for her trade-in costs. The ALJ's preliminary hearing Order was reversed.<sup>4</sup>

Here, the Board concludes, under the facts and circumstances of this case, that medical treatment under the Act does not include the payment of utility bills. The Board finds under these facts, the payment of the utility bills is not a requirement, "as may be reasonably necessary to cure and relieve the employee from the effects of the injury."<sup>5</sup> Everyone who owns or rents an apartment or a house has the responsibility to pay the expenses that are incurred in providing the essential utilities in order to live in the house or the apartment. The Act provides the injured worker compensation for payment of those utility expenses either through temporary total disability, permanent partial general disability or permanent total disability compensation.

The Board concludes that the ALJ exceeded his authority when he ordered respondent to pay claimant's utility bills pursuant to a preliminary hearing order. Thus, the Board finds that the ALJ's preliminary hearing Order should be reversed.

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ John D. Clark's May 14, 2002, preliminary hearing Order is reversed because the ALJ, in accordance with the preliminary hearing statute, did not have authority to order respondent to pay claimant's utility bills as medical treatment.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2002.

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BOARD MEMBER

c: W. Walter Craig, Attorney for Claimant  
Vincent A. Burnett, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director

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<sup>4</sup> Hedrick at p.788.

<sup>5</sup> See K.S.A. 44-510h(a).